**IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH**
**AT HYDERABAD**

(Special Original Jurisdiction)

MONDAY, THE EIGHTEENTH DAY OF JULY
TWO THOUSAND AND FIVE

**PRESENT**

**THE HON'BLE MR JUSTICE S.ANANDA REDDY**

**WRIT PETITION NO : 14727 of 2005**

Between:

Md. Tajmia, S/o.Jahangir Ali,
in English, A.P.T.W.R. School, Miryalaguda (Boys)

Nalgonda District.

**..... PETITIONER**

AND

1 The A.P. Tribal Welfare Residential Educational Society Rep by its Chairman cum Prl. Secretary to the Govt.
Social Welfare Department, Hyderabad.
2 The Member Secretary, Gurukulam, Andhra Pradesh,
T.S. Bhavan, Masabtank, Hyderabad.

**.....RESPONDENTS**

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue writ order or direction more particularly one in the nature of Writ of "MANDAMUS" declaring the proceedings issued in Rc.No. A1/5282/2000 dated 27-5-2005 by the 2nd respondent as illegal, arbitrary, discriminatory and contrary to article 14 of the constitution of India and set aside the same and consequently declare that the G.O.Ms.No. 225 dated 18-5-1999 is applicable to the 1st respondent society and also declare the action of the school either on adhoc basis or on temporary basis on par with his juniors the constitution of India and consequently direct the respondents to promote the petitioner as Principal of residential school either on adhoc basis or on temporary basis on par with his juniors by giving the benefit of G.O.Ms.No. 225 dated 18-5-1999 immediately with all consequential benefits in the interest of justice and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case

**Counsel for the Petitioner:MR.M.RATNA REDDY**

**Counsel for the Respondents.: GP FOR SOCIAL WELFARE**

**The Court made the following :**

**O R D E R:**

This Writ Petition is filed by the petitioner seeking writ of mandamus declaring the proceedings issued by the 2nd respondent in Rc.No.A1/5282/ 2000, dated 27.05.2005 as illegal, arbitrary, discriminatory and contrary to the provisions of the Constitution of India, and consequently declare that G.O.Ms.No.225, dated 18.5.1999 is applicable to the 1st respondent society and also declare the action of the respondents in not promoting the petitioner as Principal of residential school either on ad hoc basis or on temporary basis on par with his juniors as illegal, arbitrary, unjust and discriminatory; and consequently direct the respondents to promote the petitioner as Principal of residential school on par with his juniors.

2. According to the petitioner, he was appointed as Post Graduate Teacher in English on 05.10.1990 after due process of selection in the A.P. Residential Educational Institutional Society, and posted to Utnoor, Adilibad district. The services of the petitioner were regularised by proceedings dated 02.11.1993 with effect from his date of appointment. Later, the Government bifurcated the A.P. Residential Educational Institutional Society and established the A.P. Tribal Welfare Residential Educational Society, the 1st respondent herein. Thereafter, the petitioner was allotted to the 1st respondent society and was transferred to A.P.T.W.R.School, Miryalguda by proceedings dated 21.04.2001. Since then the petitioner has been working in the 1st respondent society. It is further stated that in the seniority list the petitioner was shown at Sl.No.55. The 1st respondent called for objections whether the candidates are willing to opt for the post of Junior Lecturer or Principal, and the petitioner has opted for promotion to the cadre of Principal. Basing on the said options, 22 Post Graduate Teacher candidates were promoted as Principals on ad hoc basis. While promoting so, the petitioner was ignored, though fifteen of his juniors have been promoted, without giving any reasons. Therefore, the petitioner submitted representations on 12.08.2004 and 31.08.2004 to the respondents, but

they did not take any action. On the other hand, the impugned proceedings are issued stating that the petitioner did not pass the departmental Accounts tests, and therefore, he is not eligible, and the G.O.Ms.No.225 granting exemption has no application to the 1st respondent institution. Hence, the petitioner has come up with the present Writ Petition.

3. At the time of hearing, it is represented by the learned counsel for the petitioner that there are no specific Rules or Regulations of the 1st respondent society as to the exemption of the Departmental Tests. But, however, it is covered by Rule 17 of the APTWREIS Recruitment Rules 1999, which reads: -

> "In respect of any service matters, not specifically dealt with in these Rules, the relevant provisions of the A.P. State and Subordinate Service Rules, A.P. Educational Subordinate Service Rules, A.P. Education Service Rules, A.P. Fundamental Rules and Subsidiary Rules, A.P. Public Employment (Regulation of Age of Superannuation) Act, 1984 and the Amendment Act, 1985, the A.P. (Regulation of appointments to Public Services and Rationalisation of Staff Pattern and Pay structure) Act, 1994 as amended by Act 3 of 1998 of as amended from time to time along with the executive orders and clarificatary instructions, shall apply 'Mutatis Mutandis' to the officers and staff to the A.P.T.W.R.E.I. Society"

In view of the above it is stated by the learned counsel for the petitioner that wherever the Rules and Regulations of the 1st respondent society are silent, the other Rules are applicable, including the executive instructions as well as the clarificatary instructions issued by the Government. Therefore, the learned counsel contended that as G.O.Ms.No.225 is one in the nature of a clarification granting exemption with reference to the employees, who have crossed 45 years, from passing the departmental tests prescribed under the Special Rules or Adhoc Rules. Therefore, the petitioner is entitled for exemption from passing the departmental tests. Hence, the learned counsel for the petitioner sought for the relief by quashing the impugned order.

4. A counter is filed on behalf of the respondent-society disputing and denying the contentions of the petitioner. It is specifically contended by the learned Standing Counsel for the respondent-society that the Society did not adopt G.O.Ms.No.225. Therefore, the exemption provided in the said G.O., is not available to the petitioner.

But, however, when the Rule-17 of the Respondent-Society was referred, the learned counsel could not answer the same.

5. Heard the both sides and considered the material on record.

6. The grievance of the petitioner is that his case was not considered for promotion to the post of Principal, perhaps on the premise that he did not pass the departmental accounts test. But, his case is that in view of the orders of the Government in G.O.Ms.No.225 granting exemption to the employees from passing the departmental tests, who have crossed 45 years age, he need not pass the said test, and therefore, he is entitled for promotion to the post of Principal. Though the respondent-society disputes the same as to the application of the said G.O., in view of the specific reference to made to Rule/Regulation 17, which refers to the application of the orders of the Government, including clarificatary as well as the exemption orders, the said G.O., would be applicable to the 1st respondent society also. Therefore, it is not open to the respondents to claim that G.O.Ms.No.225, dated 18.5.1999 is not applicable to the society.

7. Under the above circumstances, the impugned order passed by the respondents is set aside and the respondents are directed to consider the case of the petitioner for promotion as prayed for. The Writ Petition is accordingly allowed. No costs.

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S.Ananda Reddy, J.

18…07…2005

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To

1 The Chairman-Cum-Principal Secretary to the Government., A.P. Tribal Welfare Residential Educational Society, Social Welfare Department, Hyderabad.

2 The Member Secretary, Gurukulam, Andhra Pradesh,
T.S. Bhavan, Masabtank, Hyderabad.

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**THE HON'BLE MR. JUSTICE S. ANANDA REDDY**

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**W.P. No. 14727 of 2005**

**O R D E R**

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